MM DKt. 92-51

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Petition for Declaratory Ruling That Lenders May Take a Limited Security Interest in an FCC License	MMB File No. 910221A

COMMENTS OF
MORRISON & FOERSTER

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TABLE OF CONTENTS

SUMMARY

This Commission has long recognized that the Communications Act requires it to carry out its duties in a manner that furthers the public interest. The instant Petition asking the Commission to re-examine its prior statements concerning the right of lenders to take a limited security interest in an FCC license (with actual foreclosure thereon subject to prior Commission approval) seeks application of this principle to Commission policies affecting the credit environment for licensees. Although the Petition speaks only of broadcast licenses, the applicable legal principles and public policy considerations warrant extension of the declaratory ruling to all Commission licenses, including those in the cellular and paging industries and in emerging, radio-based technologies.

The requested ruling is fully consistent with prior Commission efforts to carry out its responsibilities under the Communications Act -- including under Section 310(d) -- in a manner that does not needlessly frustrate the business needs of regulated entities. Indeed, the Commission has already accepted the legal underpinning of this request, and other federal and state agencies exercising analogous authority have accomplished the result sought here.

Consistent with both its broad public interest mandate and its licensing authority, the Commission should grant the Petition as expanded to cover all licensees.

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Before the Commission are petitions by two law firms representing broadcast stations and institutions that provide financing for broadcast stations. Both seek a liberalization of the restrictions the Commission has placed on the interests lenders may take in what is typically the most valuable "asset" of a borrower in the broadcast industry: its license.

The petition filed by Hogan & Hartson in MMB File No. 910221A [hereinafter "the Petition"] seeks a declaratory ruling that a creditor may take a limited security interest in an FCC license which, in the event of default, would entitle the creditor to cause a sale of the licensed facility -- subject to prior Commission approval.[1]

1 A second petition, filed by Crowell & Moring in MMB File No. 870921A, seeks a declaration that the rule barring the seller of a broadcast facility from retaining a reversionary right applies only to an automatic right to reacquire the license without prior Commission approval. Morrison & Foerster takes no position on that petition.

The law firm of Morrison & Foerster represents financial institutions that lend to communications businesses holding licenses from this Commission for broadcast, cellular telephone and paging services. In addition, some of these and other licensees are exploring new radio-based services such as personal communications services.[2] In the interests of both lending institutions and their borrower/licensees, we support the Petition and urge the Commission to grant the declaratory ruling requested. We ask, however, that the Commission broaden its scope to encompass non-broadcast radio licenses. Cellular, paging, and other businesses that rely on radio-based technologies suffer under the same disability (also derived from Section 310(d) of the Act) as the broadcast industry. Moreover, the legal analysis of the issues raised by the Petition applies with equal force to non-broadcast radio licenses.

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2 In a Notice of Inquiry issued last year, the Commission began to explore issues raised by the emergence of new, radio-based technologies. Amendment of the Commission's Rules to Establish New Personal Communications Services, 5 FCC Rcd 3995 (1990). Citing the growth in consumer interest at home and the rapid growth of these technologies abroad, the Commission sought comment on spectrum allocation and technical standards issues, as well as the appropriate regulatory structure for these services. The expansion of this proceeding to cover all Commission licenses would serve the same goals as this Notice of Inquiry, i.e., fulfillment of the "policy of the United States to encourage the provision of new technologies and services to the public." 47 U.S.C. § 157(a).

The Commission has long acknowledged its obligation to exercise its licensing authority in the public interest and has several times modified its handling of license transfer and renewal matters to accommodate statutory or other legitimate public policy considerations. Such a pragmatic approach is consistent with the Commission's public interest mandate, the practices of other federal and state agencies administering comparable licensing schemes, and the declaratory ruling requested here.[3]

I. The Current Regime Harms Licensees In Broadcast And Other Radio-Based Enterprises.

Financing for FCC-licensed entities is not dramatically different than for other enterprises. Companies that are adequately capitalized and can demonstrate a predictable history of cash flow may be able to obtain financing on an unsecured basis, while those that are not must offer something to reduce the lender's risk, typically collateral.

In most cases the most valuable asset by far of an FCC-licensed company is its license.[4] The prohibition on

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3 We see no need to plow the same furrows as the Petition with respect to either the history of Commission dicta on the security interest question or the pertinent legislative history.

4 It is not uncommon for the license to be worth 10 to 20 times the value of all other assets combined. See letter from William R. Strickley to Alan G. Benjamin, April 16, 1991, p.1 (Attachment A hereto)

taking a security interest in a license effectively prevents a licensed company from pledging its most valuable asset. As a result, well-established licensees can obtain credit (on an unsecured basis), while newer ventures often cannot obtain adequate financing even in the best of times. Some can obtain credit based upon assets other than the license, but the amount of financing is often inadequate, and certainly less than would be available if the license could be the subject of a security interest. Emerging technology-based companies are particularly hard hit by the ban on security interests, because they can rarely (if ever) document a successful operating history to obtain credit. Similarly, the ban works to the detriment of minorities and women, who are typically new entrants to the field.[5]

The courts have relied on the Commission's (we believe unfortunate) statements on this issue, holding that a security interest in an FCC licensee is limited to non-license assets. See, e.g., Stephens Industries, Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986). Indeed, one court has recently attributed to the license any value realized for non-license assets that exceeds the liquidation value of those assets. In re Oklahoma City Broadcasting Co., 112 B.R. 425 (W.D. Okla. 1990).

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5 The petition in MMB File No. 870921A addresses the difficulties facing minority broadcasters in this regard.

The result in Oklahoma City Broadcasting is a particularly striking example of the complications wrought by the Commission's current policy. In that case the lender had a perfected security interest in the non-license station assets. A buyer willing to pay $3 million for the non-license assets was found, thus making unnecessary any allocation between license and non-license assets -- or so the lender thought. The bankruptcy court found that the lender was not entitled to the full proceeds of the asset sale. It held that a contrary result would amount to recognizing the "going concern value" of the non-license assets, which the court said could happen only if the license were also being sold. The court therefore limited the lender's recovery from the sale to the "liquidation value" of the non-license assets.[6]

The harmful effects of the security interest ban are not limited to the initial extension of credit. If a company has cash flow problems -- a common enough occurrence in times of economic recession -- additional credit or the stretching out of payments will often "save" it, thus

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6 The principle that a secured lender cannot realize more than the liquidation value of its collateral not only limits the amount of credit available to a borrower but may also result in unnecessary appraisal and litigation costs in bankruptcy. When the assets of a licensed company are sold, the relative value of the license and non-license assets must be determined so an allocation of proceeds can be made. Each party to the sale must hire appraisers, and the court must spend additional time making its determination of asset values.

ensuring continued service to the public. Without the ability to grant a security interest in its most valuable asset, a company's ability to obtain needed financing will be severely limited and the quality of service could suffer. This limitation may be the most unfortunate consequence of the security interest ban.[7]

II. The Commission Should Continue To Interpret the Communications Act In A Manner Hospitable To The Business Needs Of Regulated Entities.

On several occasions, the Commission has modified its licensing practices to accommodate the legitimate corporate and commercial needs of regulated entities while ensuring that statutory mandates are met. Indeed, the Communications Act's public interest requirement has been held to compel the Commission to consider policies outside the Act when fulfilling its statutory mandates. LaRose v. FCC, 494 F.2d 1145, 1146-47 n.2 (D.C. Cir. 1974). The relief sought by the Petition involves no more than a modest application of this logic.

A. The Commission Exercises Its Approval Rights Over License Transfers And Renewals So As Not To Harm Other Legitimate Interests.

The Commission has in the past modified its policies regarding license transfers in an effort to

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7 See letter from William R. Strickley, p. 2.

accommodate the legitimate business interests of parties. The Commission has eased its transfer restrictions where to do so would better serve the public interest, e.g., in cases of bankruptcy and contests for control of corporations.

The Commission has a longstanding policy of not permitting the transfer of a license that is the subject of a challenge in a renewal proceeding.[8] Through that practice, the Commission seeks to preclude a licensee from escaping the consequences of its alleged wrongdoing and from realizing a financial benefit from the sale of the station. While the goal of this policy was to foster the public interest, the Commission found that, in many cases, the restriction on license transfers had a side effect that was itself contrary to the public interest. Creditors of insolvent licensees were effectively being denied their rights to the proceeds of the sale of the licensee.

Consequently, in Second Thursday Corp., 25 F.C.C. 2d 112 (1970), the Commission modified its policy to accommodate sales taking place as part of an involuntary bankruptcy. Where the alleged wrongdoer does not share materially in the proceeds of the sale, the Commission acknowledged that the only victims of its refusal to permit the renewal and transfer of the license were innocent creditors. The Commission therefore decided to permit the

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8 See, e.g., Jefferson Radio Co. v. FCC, 340 F.2d 781, 783 (D.C. Cir. 1974).

renewal of a license conditional upon its transfer to an acceptable assignee. 25 F.C.C. 2d at 115.[9]

This commonsense approach to serving the public interest has led the Commission to modify its renewal and transfer practices outside the bankruptcy context as well. In one case, for example, the Commission approved the transfer of radio licenses despite a pending challenge to the transferor's alleged violation of the alien ownership rules. The Commission found that the transfer would serve the public interest by (1) affording a prompt resolution to a technical violation of the alien ownership restrictions, (2) removing a cloud over the stations and thereby preventing a deterioration in the quality of service, and (3) facilitating the settlement of pending shareholder derivative and antitrust litigation and thereby alleviating the crowded federal court dockets. Spanish International Communications Corp., 2 FCC Rcd 3336, 3340 (1987), remanded sub nom. Coalition for the Preservation of Hispanic Broadcasting v. FCC, 893 F.2d 1349 (D.C. Cir. 1990), reh. en banc pending, Nos. 87-1285 et seq.

Indeed, the Commission has eliminated the anti-transfer rule completely with respect to common carrier

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9 Where the principal of a licensee is also a major creditor, the Commission has made the license renewal and transfer conditional on the principal's relinquishing its rights as creditor. George E. Cameron, Jr. Communications, 93 F.C.C.2d 789, 819 (1984); Peoria Community Broadcasters, Inc., 79 F.C.C.2d 311, 328 (1980). See KOZN FM Stereo 99, Ltd., 6 FCC Rcd 257 (1991)..

radio licenses. In Cablecom-General, Inc., 87 F.C.C. 2d 784 (1981), it permitted the transfer of licenses in the cable television relay service (CARS), common carrier microwave, and domestic satellite services despite open questions about the character of the transferor, a subsidiary of RKO General. Because common carrier radio licensees do not control of the content of the information they transmit, the Commission found that concerns relevant to the sale of broadcast facilities are "far less appropriate" in the common carrier context. 87 F.C.C. 2d at 790.

In the mid-1980's, a wave of corporate takeovers impelled the Commission to modify its license transfer practices to accommodate the free operation of other laws governing contests for the control of corporate licensees. In Tender Offers and Proxy Contests, 59 Rad. Reg. 2d (P&F) 1536 (1986), the Commission adopted the now-familiar policy of permitting the interim transfer of radio licenses to a trustee based on a "short-form" application pending the outcome of a tender offer or proxy contest; the regular, "long-form" process of approving a transfer from the trustee to the eventual victor could then proceed at an orderly pace.[10] The Commission believed that the administrative

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10 The policy statement embodied the approach taken a year earlier in One Two Corporation, 58 Rad. Reg. 2d (P&F) 924, ¶ 20 (1985), where the Commission permitted "reasonable accommodation of those other federal policies and state policies regarding corporate governance, while reserving to this Commission an opportunity to make the public interest determination required by the Communications Act . . . ."

delay that typically accompanies the "long-form" process could deprive shareholders of an effective choice in deciding whether to tender their stock or to vote their shares by proxy. It expressly rejected the notion that "the formulation of communications policies -- with myopic disregard of other important national policy objectives -- furthers the public interest," 59 Rad. Reg. 2d at 1552, and concluded that delays that are not essential to implementing statutory requirements disserve the public interest and should be eliminated. 59 Rad. Reg. 2d at 1540 n.16. As in the license renewal cases discussed above, the Commission's modified policies permitted it to fulfill its statutory licensing obligations in a manner consistent with public policies outside the communications regulatory scheme.

These cases illustrate that the Communications Act confers on the Commission the discretion to adopt licensing practices designed to serve the public interest and the discretion to modify those practices when the public interest so requires. The cases also demonstrate the breadth of the appropriate public interest considerations. See generally Greater Boston Television Corp. v. FCC, 444 F.2d 841 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971). As discussed below, these considerations argue in favor of modifying the policy against permitting lenders to take a security interest in a license.

B. The Commission Exercises Its Approval Rights Over Transfers of Control In Corporate Licensees So As To Permit Secured Lending To Corporate Licensees.

For more than 30 years, the Commission has permitted corporate licensees to pledge their stock as collateral, so long as the financing instrument acknowledges that any transfer of control of the license is subject to the Commission's prior approval. In particular, the Commission requires that instruments pledging the stock of a licensee provide that, in the event of a default, (1) voting rights will remain with the original licensee, (2) there will be a private or public sale of stock, and (3) the Commission's consent to the transfer of control will be obtained before the exercise of shareholder rights by the purchaser at such sale. See, e.g., Carta Corp., 3 FCC Rcd 798, 800 (1988).

As the Petition points out, at pp. 22-23, it is anomalous for the Commission to bar the taking of a security interest in a license while permitting the pledge of an ownership interest in the licensee.[11] The Commission's

11 The facts of Nueva Vista Productions, Inc., 5 FCC Rcd 5222 (1990), illustrate the point. There a construction loan was secured by a lien on the borrower's assets (with the licenses expressly excepted), but additional financing was secured by, inter alia, put/call options on the stock of the corporate licensee. The latter pledge was made subject to the Commission's approval of any transfer of control, thus preserving the agency's statutory obligation to approve all licensees.

rules for security interests in stock are well-established,[12] and could apply just as well to interests in the license itself.

The Commission has stated that the pledge of stock in a licensee, coupled with a clear statement that any transfer of control incident to foreclosure is subject to prior Commission approval, is a "protective yet beneficial mechanism[]" for financing. Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 99 F.C.C. 2d 1249, 1254 (1985). Indeed, the Commission has enacted rules to safeguard its authority to approve such transfers of control, including a requirement that any financing arrangements that would affect the ownership of the license be disclosed. 47 C.F.R. § 73.3613. See Valley Broadcasting Co., 4 FCC Rcd 2611, 2616 (1989). These rules could serve the same protective function in connection with limited security interests in the license itself.

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12 See, e.g., D.H. Overmyer Telecasting Co., Inc., 94 F.C.C. 2d 117 (1983) (approving the transfer of a controlling interest in a licensee to bank foreclosing on a stock pledge in anticipation of an eventual sale to a third party). See also Pacific Power & Light Co., 42 F.C.C. 2d 375, 377 (1973) (finding no unauthorized transfer of a radio license where the parties' agreement to transfer and voting trust agreements are expressly contingent upon prior Commission approval).

C. Permitting A Lender To Take A Security Interest In A License Is Consistent With The Communications Act.

As the Petition points out, at pp. 19-21, the Commission has already adopted the legal reasoning that underlies the instant Petition: that a license represents something of value which the license can realize consistent with the Communications Act.

In Bill Welch, 3 FCC Rcd 6502 (1988), the Commission held that neither Sections 301, 304 nor Section 310(d) bar the sale to a private party, subject to prior Commission approval, of "whatever private rights a permittee has in its license." Id. at 6503 (footnotes omitted).[13] The Commission found that the purpose of these provisions was to restrict "a licensee's ability to claim a vested right in a frequency." Id. As the Commission noted, Congress did not intend to "restrict[] a licensee's ability to earn a profit on the value inherent in its authorization." Id. It concluded that Section 310(d)

> requires that all transfers and assignments are simply to be judged by this Commission under the general public interest, convenience and necessity test. The fact that the Commission is required

13 Although Bill Welch arose in connection with the transfer of control of a corporation authorized to build and operate a cellular telephone facility, the statutory provisions construed there are the same ones applicable to all radio licenses.

> to undertake such review, and that no permit can be assigned or transferred prior to Commission approval, ensures that the Federal Government retains control over use of the spectrum, consistent with Sections 301 and 304.

Id. at 6504. Most importantly, the Commission ruled that, despite its repeated pronouncements that "a license to utilize frequencies is not a property right,"[14] it does not follow that the license has no value or that the licensee may not realize a profit upon its (authorized) transfer.[15] Likewise, it does not follow that a security interest cannot be obtained in a license. To the contrary, permitting such an interest would be fully consistent with the Communications Act.

The Commission has said that it has "no duty to create for creditors of bankrupt broadcast licensees . . . a preferred risk status different from that of creditors of other enterprises." Mid-State Broadcasting Co., 61 F.C.C. 2d 196, 200 (1976). Petitioners here ask only that the

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14 3 FCC Rcd at 6502. See Twelve Seventy, Inc., 6 Rad. Reg. 2d (P&F) 301, 304 (1965); Perfection Music, Inc., 30 Rad. Reg. 2d (P&F) 12 (1974); Kirk Merkley, 94 F.C.C. 2d 829, 830 (1983). The Petition, at pp. 5-12, traces this line of cases and concludes (correctly, we believe) that it represents the unwarranted transformation of needlessly broad dicta into gospel.

15 This latter principle is as firmly established in fact -- see note 4, supra -- as in law. See LaRose v. FCC, 494 F.2d at 1150 ("[T]he license is by far the most valuable asset of [a licensee] . . . .").

Commission adopt a policy and practice that permits it to implement that recognition.

D. Licenses Or Permits Issued Pursuant To Comparable Regulatory Schemes Have Been Recognized As Property Rights.

Licenses or permits issued pursuant to various federal and state regulatory schemes have long been recognized to confer property rights. Where the regulatory scheme prohibits transfer of a license or permit without prior government approval, the property rights are limited to take account of that fact.

The Interstate Commerce Act, from which the Communications Act is derived and to which it is frequently analogized,[16] requires prior agency approval before any transfer of the operating rights of a certificated carrier is effective. See 49 U.S.C. § 312(b). Nonetheless, a certificate of public convenience and necessity issued by the Interstate Commerce Commission has been held to be transferable property that can be the subject of a valid chattel mortgage. In re Rainbo Express, Inc., 179 F.2d 1, 5 (7th Cir.), cert. denied sub nom. Richardson v. National Acceptance Co., 339 U.S. 981 (1950).[17] In so ruling, the

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16 See e.g., MCI Telecommunications Corp. v. FCC, 917 F.2d 30, 38 (D.C. Cir. 1990).

17 See also National Carloading Corp. v. Astro Van Lines, Inc., 593 F.2d 559, 561 (4th Cir. 1979); Union National Bank of Pittsburgh v. Interstate Commerce Commission, 569 F.2d 742, 743 (3rd Cir. 1977).

court in Rainbo Express cited the reasoning of the Supreme Court in a case concerning the transferability of membership in the Chicago Board of Trade: "[The membership] had decided value. . . . It was property and substantial property to the extent of some amount, notwithstanding the contingencies to which it was subject." 179 F.2d at 4 (quoting Page v. Edmunds, 187 U.S. 596, 601 (1903)). Once it had determined the certificate to be transferable property, the Rainbo Express court was "not able to discern any logical basis why it could not properly become the subject matter of a valid chattel mortgage." 179 F.2d at 5.

Similarly, airport landing slots have been held to confer limited property interests despite the fact that the interests "exist[] by the grace of government." In re American Central Airlines, Inc., 52 B.R. 567, 571 (N.D. Iowa 1985). Indeed, the Federal Aviation Act, like Section 301 of the Federal Communications Act, specifies that operating rights do not confer ownership rights. Nonetheless, the Aviation Act's declaration "does not detract from the reality that a market for these slots exists in which carriers may buy and sell these slots." In re Gull Air, Inc., 890 F.2d 1255, 1260 (1st Cir. 1989). Similarly, a market exists for the purchase and sale of FCC licenses, a reality of which this Commission is well aware, and one that it should acknowledge by permitting lenders to take a security interest in such licenses.

Certain federal quasi-governmental entities have recently modified their regulatory regimes along similar lines. The Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"), which purchase and package mortgage loans for sale in the secondary market to private investors, have a right of prior approval over who may service the loans purchased through or guaranteed by them.[18] Historically, FNMA and FHLMC have relied on this prior approval requirement in refusing to permit a servicer to grant a security interest in its right to service such mortgage loans.

Within the past year, however, both FNMA and FHLMC have recognized that reversal of this policy would make additional financing available to the mortgage banking industry, thereby facilitating the larger objectives FNMA and FHLMC were created to foster. Accordingly, a mortgage servicer may now grant a security interest in its right to service mortgage loans purchased or guaranteed by FNMA or FHLMC, subject to the approval of those entities.[19]

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18 Mortgage servicers receive a fee for collecting payments, remitting them to the investor, resolving delinquencies, etc.

19 See "Pledging Servicing Rights," FNMA Announcement No. 90-27 (Aug. 27, 1990) (Attachment B hereto); "Security Interests Under UCC," FHLMC Bulletin No. 90-10 (July 18, 1990) (Attachment C hereto). Organizations in the private sector have made similar adaptations of their rules. For example, the National Football League ("NFL") has historically viewed its franchise as a privilege granted and revocable by the NFL, transfer of which must be approved by a specified percentage of existing team owners. The grant (Footnote 19 Continued)

Licenses or permits issued pursuant to various state regulatory schemes have also been recognized as conferring property rights. Certificates of public convenience and necessity issued by state public utilities commissions have been found to be the subject of a valid security interest. In re Cleveland Freight Lines, Inc., 14 B.R. 777, 780 (N.D. Ohio 1981). See also Barutha v. Prentice, 189 F.2d 29, 31 (7th Cir.), cert. denied, 342 U.S. 841 (1951)(holder of a contract motor carrier license issued by Wisconsin Public Service Commission has a transferable proprietary interest).[20]

CONCLUSION

The Commission has within its power the ability to effect a significant improvement in the credit environment for holders of Commission licenses by encouraging financial institutions to lend to them on better terms. As is apparent from the practices of this Commission and federal

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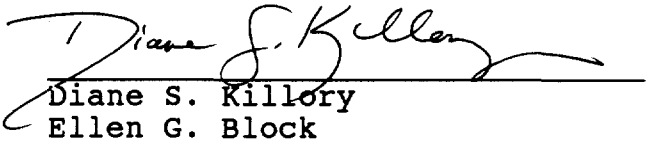
(Footnote 19 Continued)
of a security interest in the franchise to a third-party lender was expressly prohibited. In order to improve access by team owners to financing, the NFL now allows a lender to take a security interest in the franchise so long as, in the event of a default and foreclosure, the lender gives notice to the NFL and allows it to approve the prospective transferee.

20 Liquor licenses have also been held to be legitimate subjects of a valid security interest. See, e.g., In re O'Neill's Shannon Village, 750 F.2d 679 (8th Cir. 1984) (South Dakota law); Bogus v. American National Bank of Cheyenne, 401 F.2d 458 (10th Cir. 1968) (Wyoming law); In re Pike, 62 B.R. 765 (W.D. Mich. 1986) (Michigan law).

and state agencies exercising comparable authority, this can be accomplished without impairing the Commission's statutory responsibilities with respect to licenses. These considerations, coupled with the tenuous grounds on which current law rests, argue strongly in favor of granting the declaratory ruling requested by the Petition as expanded to cover all licensees.

Respectfully submitted,



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April 22, 1991

ATTACHMENT A

Bank of America

William R. Strickley
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April 16, 1991

Alan G. Benjamin, Esq.
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Dear Mr. Benjamin:

In connection with the comments your firm intends to file with the Federal Communications Commission in relation to broadcast licenses you have asked for comments which are applicable to the granting of security interests in broadcast licenses.

I am a Vice President at Bank of America National Trust and Savings Association in Los Angeles, California. I have held that position for 10 years. I have personal knowledge of the matters stated herein and could and would, if called as a witness, competently testify thereto.

During this time, I have specialized in arranging financing to the broadcast media industry. In particular, I have personally worked on or supervised nine transactions which involved the provision of credit to companies owning radio or television properties in at least 30 cities in the United States. The purpose of these credits included acquisition financing and working capital facilities. In approximately 90% percent if the foregoing transactions, the bank's financing was secured at least in part by broadcast-related assets of the borrowing entity.

In my experience, the loans which are most attractive to the borrower in terms of pricing, amount and other conditions are those which are secured by assets of the borrower. From the bank's standpoint, the most valuable asset which an FCC-licensed company possesses is its FCC license. In the transactions with which I am familiar, and based on appraisals I have reviewed, the FCC license is commonly worth from 10 to 20 times the value of all other combined assets of the broadcast entity.

My understanding is that current FCC policy prohibits a license holder from granting a third party lender a security interest in an FCC license. Since banks will generally prefer to lend to FCC-licensed companies on a secured basis, the result of this policy is to make it more difficult for such entities to obtain bank financing. In my experience, only those FCC-licensed companies which are well-established and have a documented record of generating strong cash flows are able to access credit on an unsecured basis or by offering assets other than the FCC license as security.

In addition, companies which experience each flow coverage or liquidity problems during periods of recession in economic upheaval are also severely disadvantaged by the current FCC policy. A bank faced with a workout situation will typically seek collateral (or additional collateral) to render the credit more secure, but pursuit of this alternative is seriously hampered in the case of an entity whose main asset is its FCC license. The upshot is that the bank is required to impose much tougher financial and other requirements on the borrower, thereby reducing the borrower's operating flexibility and the likelihood that the borrower will emerge from the workout with its business intact.

On the basis of my experience in this area, I believe a change in current FCC policy to allow, even conditionally, the grant of a security interest in FCC licenses would facilitate bank financing of the broadcast industry. In particular, such a change in policy could make additional funds available to new companies or companies experiencing temporary financial problems.

To the best of my knowledge the foregoing statements are true and correct and the foregoing options represent my views.

Sincerely,

William R. Strickley
Vice President